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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

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10 IN RE THE MATTER OF WITNESS
11 DR. SUSAN CLARK

Case No. MS09-54RSL

12 ORDER TO SHOW CAUSE
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14 This matter comes before the Court *sua sponte*. The Court is considering holding
15 Dr. Susan Clark in contempt of Court pursuant to Federal Rule of Civil Procedure 45(e)
16 and the Court's inherent authority for failing to comply with a subpoena, for refusing to
17 comply with a direct order of the Court, and for destroying relevant evidence.

18 Specifically, in the civil matter French v. Providence Everett Medical Center, C07-
19 0217RSL, defendant Providence Everett Medical Center ("PEMC") issued a subpoena
20 dated October 26, 2007 to Dr. Susan Clark requesting "all medical records" relating to the
21 plaintiff, Julie French. Despite the obvious breadth of the subpoena, Dr. Clark failed to
22 produce some of her documents regarding plaintiff. By order dated April 6, 2009, the
23 Court explained that the withheld documents were responsive to the subpoena, and that
24 Dr. Clark should have produced them or complied with the Federal Rules of Civil
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1 Procedure by objecting to the subpoena, moving to quash it, or seeking a protective order.
2 In the same order, the Court ordered Dr. Clark to promptly produce a copy of the
3 documents.

4 On April 7, 2009, Dr. Clark informed the Court via a letter, "The notes have been
5 destroyed by burning." The tone of the letter was defiant. Dr. Clark never produced a
6 copy of the notes.

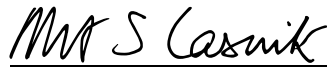
7 The loss of Dr. Clark's documents created an evidentiary problem in the *French*
8 case. Dr. Clark produced outpatient review forms from 2004 and 2006, but she did not
9 produce a similar document from 2005, which was the year the relevant events occurred.
10 She also refused to produce her process notes. Moreover, Dr. Clark refused to produce an
11 evaluation of treatment summary from the relevant time. Dr. Clark explained in her
12 deposition that the document provided background information and the reasons why she
13 wrote a letter to PEMC recommending that plaintiff be medically discharged, a very
14 important event in the *French* case. The documents were clearly relevant. Because of
15 Dr. Clark's refusal to disclose the documents and her destruction of them, the Court had
16 to instruct the jury that the evaluation of treatment summary referred to in her deposition
17 was unavailable. Dr. Clark's actions deprived the parties and the jury of important
18 evidence.

19 Dr. Clark is hereby ORDERED to appear before the Honorable Robert S. Lasnik,
20 Chief United States District Judge for the Western District of Washington, 700 Stewart
21 Street, Courtroom # 15106, Seattle, WA 98101 on May 12, 2009 at 8:30 a.m. to show
22 cause why the Court should not (1) hold her in civil contempt and fine her in an amount
23 necessary to compensate the Court for the lost time it has spent related to this matter,
24 and/or (2) refer the matter to the United States Attorney for the Western District of
25 Washington to consider prosecution for criminal contempt. Dr. Clark is notified that she

1 has a right to have an attorney present with her at the hearing, and she should strongly
2 consider doing so. If Dr. Clark retains an attorney and he or she needs to contact the
3 Court in regard to scheduling or obtaining relevant documents, the attorney should call
4 the Court's judicial assistant, Teri Roberts, at 206-370-8810.

5 A United States marshal or deputy United States marshal is directed to serve this
6 Order to Show Cause on Dr. Clark.

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8 DATED this 16th day of April, 2009.

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11 Robert S. Lasnik
12 United States District Judge
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